



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0140]

Hours of Service of Drivers: Application for Exemption; American Pyrotechnics Association

ACTION: Notice of Final Disposition.

SUMMARY: FMCSA announces its decision to grant the American Pyrotechnics Association (APA) an exemption from the hours-of-service (HOS) regulations that require a motor carrier to install and require each of its drivers to use an electronic logging device (ELD) to record the driver's HOS. APA requested the exemption for APA member companies currently holding an exemption from the HOS 14-hour rule during the Independence Day season. These member companies will continue to use paper records of duty status (RODS) in lieu of an ELD during the designated Independence Day periods. FMCSA has determined that the terms and conditions of the exemption ensure a level of safety equivalent to, or greater than, the level of safety achieved without the exemption.

DATES: The exemption is effective from June 28 through July 8, at 11:59 p.m. local time, in 2019 and 2020.

ADDRESSES:

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you

want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: Ms. LaTonya Mimms, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (202) 366-9220, E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to www.regulations.gov and insert the docket number, “FMCSA-2018-0140” in the “Keyword” box and click “Search.” Next, click “Open Docket Folder” button and choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building,

1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-4225. E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also

specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

The APA reports that it is a national safety and trade association of the U.S. fireworks industry, representing manufacturers, importers, distributors, wholesalers, retailers, suppliers and professional display companies. APA has over 250 member companies. Along with their subsidiaries, APA's member companies are responsible for nearly 90 percent of the fireworks manufactured, imported, distributed and professionally displayed in the United States.

The Agency published a notice of APA's exemption application on April 24, 2018 (83 FR17877). APA sought a limited exemption from the ELD requirements to allow member companies currently holding an exemption from the 14-hour rule to continue to maintain paper RODs in lieu of ELDs. Various APA members have held 2-year exemptions during Independence Day periods from 2005 through 2014. On May 9, 2016, the current exemption for APA members was extended to July 8, 2020, pursuant to section 5206(b)(2)(A) of the Fixing America's Surface Transportation (FAST) Act (81 FR 28115).

APA asserted that granting this exemption would be appropriate because there is no basis to believe that continuing to allow paper record keeping for this limited subset of the regulated community, and for a limited period of time, would impact operational safety in any regard. In addition, due to the unique nature of the fireworks industry, requiring the use of ELDs for this limited seasonal delivery period would impose a

substantial financial burden on members because it would require them to purchase/lease ELD systems for use for only a short period every year.

APA explained that its members rely upon intermittent casual drivers periodically throughout the year and particularly during the busy Independence Day season when the industry depends upon short-term rental trucks. The fireworks industry is unique in that it rents or leases approximately 90% of its vehicles throughout the year for less than 30 days at a time. However, most rental companies require a minimum rental period of 14 to 21 days, although APA member companies may only use the trucks in commerce for up to 11 days. The mix of vehicles rented includes pick-up trucks, cargo vans, city vans and straight trucks with a GVW of less than 26,000 pounds. The industry relies heavily upon short-term rental trucks to transport and deliver 98% of the 16,000 Independence Day fireworks displays nationwide. This exemption would only apply when the carriers designated in the APA HOS exemption, including revisions, are operating within the specified Independence Day periods.

IV. Public Comments

The Agency received 27 comments in response to the application published on April 24. The Owner-Operator Independent Drivers Association (OOIDA) and 20 individuals supported the exemption. The Advocates for Highway and Auto Safety (Advocates) and four individuals opposed it. One individual took no position on the exemption request.

OOIDA stated that “the current ELD marketplace does not adequately support the needs of the entire trucking industry. Since the December 2017 implementation, professional drivers have shared the real-world problems they have experienced because of malfunctioning devices, lack of connectivity in rural areas, and false claims made by

ELD vendors. For these reasons, along with APA's prior exemption history, FMCSA should grant the exemption request."

The Advocates said "the application does not meet the statutory and regulatory requirements for the exemption. The application fails to consider practical alternatives, justify the need for the exemption, provide an analysis of the safety impacts the requested exemption may cause, and provide information on the specific countermeasures to be undertaken to ensure that the exemption will achieve an equivalent or greater level of safety than would be achieved absent the exemption."

V. FMCSA Decision

FMCSA has determined that granting an ELD exemption to APA for a limited period of 11 days during Independence Day celebrations will achieve a level of safety equivalent to or greater than the level that compliance with the ELD rule would ensure. Prior to publishing the **Federal Register** notice announcing the receipt of APA's application request for the exemption, FMCSA ensured that each APA member currently holding a limited exemption from the 14-hour rule possessed an active USDOT registration, minimum required levels of insurance, and was not subject to any "imminent hazard" or other out-of-service (OOS) orders. The Agency conducted a comprehensive investigation of the safety performance history of each of those motor carriers. As part of this process, FMCSA reviewed its Motor Carrier Management Information System safety records, including inspection and accident reports submitted to FMCSA by State agencies.

With regard to safety statistics, none of the carriers was under an imminent hazard or OOS order, had any alerts in the Safety Management System (SMS), or was under

investigation by the Pipeline and Hazardous Materials Safety Administration. All had “satisfactory” safety ratings based on compliance reviews, and all had valid Hazardous Materials Safety Permits.

VI. Terms and Conditions of the Exemption

Period of the Exemption

The exemption from 49 CFR 395.8(a)(1)(i) is effective from June 28 through July 8, at 11:59 p.m. local time, in 2019 and 2020, for the 53 carriers identified in the appendix to this notice.

Terms and Conditions of the Exemption

This exemption from the ELD provisions in 49 CFR 395.8(a)(1)(i) is restricted to drivers employed by the APA motor carriers already covered by the multi-year exemption from the Agency’s 14-hour rule listed in the appendix table of this notice. Drivers covered by the exemption may continue to use paper logs to record their record of duty status instead of using an ELD. Motor carriers and drivers must comply with all other requirements of the Federal Motor Carrier Safety Regulations (49 CFR parts 350-399) and Hazardous Materials Regulations (49 CFR parts 105-180).

Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

FMCSA Notification

Exempt motor carriers are required to notify FMCSA within 5 business days of any accidents (as defined by 49 CFR 390.5) involving their CMVs operating under this exemption. The notification must be by email to MCPSD@DOT.GOV and include the following information:

- a. Name of the Exemption: "APA ELD"
- b. Date of the accident,
- c. City or town, and State, in which the accident occurred, or which is closest to the scene of the accident,
- d. Driver's name and driver's license State, number, and class,
- e. Co-Driver's name and driver's license State, number, and class,
- f. Vehicle company number and power unit license plate State and number,
- g. Number of individuals suffering physical injury,
- h. Number of fatalities,
- i. The police-reported cause of the accident,
- j. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations, and
- k. The total driving time and the total on-duty time of the CMV driver at the time of the accident.

In addition, if there are any injuries or fatalities, the carrier must forward the police accident report to MCPSD@DOT.GOV as soon as available.

Termination

The FMCSA does not believe the motor carriers and drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. The FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions. Exempt motor carriers and drivers are subject to FMCSA monitoring while operating under this exemption.

Issued on: February 8, 2019.

Raymond P. Martinez,
Administrator.

**Appendix to Notice of Application for Approval of Motor Carriers to Utilize
American Pyrotechnics Association's (APA) Exemption from the ELD Rule
In Hours of Service For Drivers Regulations For Independence Day Periods**

JUNE 28 THROUGH JULY 8, 2020

	Motor carrier	Street address	City, state, zip code	DOT No.
1	American Fireworks Company	7041 Darrow Road	Hudson, OH 44236	103972
2	American Fireworks Display, LLC	P.O. Box 980	Oxford, NY 13830	2115608
3	AM Pyrotechnics, LLC	2429 East 535th Rd.	Buffalo, MO 65622	1034961
4	Arthur Rozzi Pyrotechnics	6607 Red Hawk Ct.	Maineville, OH 45039	2008107
5	Artisan Pyrotechnics, Inc.	82 Grace Road	Wiggins, MS 39577	1898096
6	Atlas PyroVision Entertainment Group, Inc.	136 Old Sharon Rd.	Jaffrey, NH 03452	789777
7	Central States Fireworks, Inc.	18034 Kincaid Street	Athens, IL 62613	1022659
8	East Coast Pyrotechnics, Inc.	4652 Catawba River Rd.	Catawba, SC 29704	545033
9	Entertainment Fireworks, Inc.	13313 Reeder Road SW	Tenino, WA 98589	680942
10	Falcon Fireworks	3411 Courthouse Road	Guyton, GA 31312	1037954
11	Fireworks & Stage FX America	12650 Hwy 67S. Suite B	Lakeside, CA 92040	908304
12	Fireworks by Gucci, Inc.	20 Pinehurst Drive	Bellport, NY 11713	324490
13	Flashing Thunder Fireworks dba Legal Aluminum King Mfg.	700 E Van Buren Street	Mitchell, IA 50461	420413
14	J&J Computing dba Fireworks Extravaganza	174 Route 17 North	Rochelle Park, NJ 07662	2064141
15	Gateway Fireworks Displays	PO Box 39327	St Louis, MO 63139	1325301
16	Great Lakes Fireworks	24805 Marine	Eastpointe, MI 48021	1011216
17	Hamburg Fireworks Display, Inc.	2240 Homs Mill Road SE	Lancaster, OH	395079
18	Hawaii Explosives & Pyrotechnics, Inc.	17-7850 N. Kulani Road	Mountain View, HI 96771	1375918
19	Hollywood Pyrotechnics, Inc.	1567 Antler Point	Eagan, MN 55122	1061068
20	Homeland Fireworks, Inc.	P.O. Box 7	Jamieson, OR 97909	1377525
21	J&M Displays, Inc.	18064 170th Ave	Yarmouth, IA 52660	377461
22	Lantis Fireworks, Inc.	130 Sodrac Dr., Box 229	N. Sioux City, SD 57049	534052
23	Legion Fireworks Co., Inc.	10 Legion Lane	Wappingers Falls, NY	554391
24	Miand Inc. dba Planet Productions (Mad Bomber)	PO Box 294, 3999 Hupp Road	Kingsbury, IN 46345	777176
25	Martin & Ware Inc. dba Pyro City Maine & Central Maine Pyrotechnics	P.P. Box 322	Hallowell, ME 04347	734974
26	Melrose Pyrotechnics, Inc.	1 Kingsbury Industrial Park	Kingsbury, IN 46345	434586
27	Montana Display Fireworks, Inc.	9480 Inspiration Road	Missoula, MT 59808	1030231
28	Precocious Pyrotechnics, Inc.	4420-278th Ave NW	Belgrade, MN 56312	435931
29	Pyro Shows, Inc.	115 N 1 st Street	LaFollette, TN 37766	456818
30	Pyro Shows of Alabama, Inc.	3325 Poplar Lane	Adamsville, AL 35005	2859710
31	Pyro Shows of Texas, Inc.	6601 9 Mile Azle Rd.	Fort Worth, TX 76135	2432196
32	Pyro Engineering Inc., dba/Bay Fireworks	400 Broadhollow Rd. Ste #3	Farmingdale, NY 11735	530262
33	Pyro Spectaculars, Inc.	3196 N Locust Ave	Rialto, CA 92376	029329
34	Pyro Spectaculars North, Inc.	5301 Lang Avenue	McClellan, CA 95652	1671438
35	Pyrotechnic Display, Inc.	8450 W. St. Francis Rd.	Frankfort, IL 60423	1929883
36	Pyrotecnico (S. Vitale Pyrotechnic Industries, Inc.)	302 Wilson Rd.	New Castle, PA 16105	526749
37	Pyrotecnico FX	6965 Speedway Blvd. Suite 115	Las Vegas, NV 89115	1610728
38	Rainbow Fireworks, Inc.	76 Plum Ave.	Inman, KS 67546	1139643
39	RES Specialty Pyrotechnics	21595 286th St	Belle Plaine, MN 56011	523981

40	Rozzi's Famous Fireworks, Inc.	11605 North Lebanon Rd	Loveland, OH 45140	0483686
41	Sky Wonder Pyrotechnics, LLC	3626 CR 203	Liverpool, TX 77577	1324580
42	Skyworks, Ltd.	13513 W. Carrier Rd.	Carrier, OK 73727	1421047
43	Sorgi American Fireworks Michigan, LLC	935 Wales Ridge Rd.	Wales, MI 48027	2475727
44	Spielbauer Fireworks Co, Inc.	220 Roselawn Blvd	Green Bay, WI 54301	046479
45	Spirit of 76	6401 West Hwy 40	Columbia, MO 65202	2138948
46	Starfire Corporation	682 Cole Road	Carrolltown, PA 15722	554645
47	Vermont Fireworks Co., Inc./ Northstar Fireworks Co., Inc.	2235 Vermont Route 14 South	East Montpelier, VT 05651	310632
48	Western Display Fireworks, Ltd.	10946 S. New Era Rd.	Canby, OR 97013	498941
49	Western Enterprises, Inc.	PO Box 160	Carrier, OK 73727	203517
50	Wolverine Fireworks Display, Inc	205 W Seidlers	Kawkawlin, MI	376857
51	Young Explosives Corp.	P.O. Box 18653	Rochester, NY 14618	450304
52	Zambelli Fireworks MFG, Co., Inc.	PO Box 1463	New Castle, PA 16103	033167
53	ZY Pyrotechnics, LLC dba Skyshooter Displays,	1014 Slocum Road	Wapwallopen, PA 18660	1030231

[FR Doc. 2019-02661 Filed: 2/15/2019 8:45 am; Publication Date: 2/19/2019]